1948 Ordinance and that land whereon buildings had been erected by a ground tenant, even with the consent of the landlord, should no longer be regarded as protected premises for the purposes of the Control of Rent Ordinance.

Mr. Lim Cheng Poh, for the defendant, drew my attention to section 12(1)(1) of the 1956 Ordinance, which reproduces in its entirety section 13(1)(1) of the repealed 1948 Ordinance. That sub-section provides that no order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except, *inter alia*, "where the premises when originally let consisted of vacant land, and there has since been erected thereon a building or buildings of a temporary character....." Mr. Lim Cheng Poh contended that that sub-section clearly contemplated that where vacant land had been let to a ground tenant who had subsequently erected thereon a building or buildings of a temporary character, then such buildings should be protected by the Control of Rent Ordinance and the landlord should not be entitled to recover possession of the land except in compliance with the prerequisite conditions set out in that sub-section. Having regard to the definition of "premises" as it now stands I do not profess to understand that sub-section. The only assumption that I can make is that when the legislature omitted from the final Ordinance that part of the Bill including in the definition of "premises," "any land whereon any such building is or has been erected with the consent of the landlord" that they also omitted to give effect to that exclusion by a consequential alteration or deletion of sub-section (1) as it now stands.

It was for these reasons that I allowed the appeal. In so allowing it I have not overlooked the fact that under O.14 it is sufficient for the defendant, in order to entitle him to defend the action, to raise a triable issue on its merits and that leave to defend ought to be given unless there is clearly no defence in law and no possibility of a real defence on a question of fact. There is, in my view, from the practical aspect an important point of law involved in this matter. But having regard to the view that I hold, and continue to hold, as to the point of law involved, there appeared to me to be no practical value in giving the defendant leave to defend, and I was of the opinion that the most expeditious manner in which to have the point of law determined was by way of an appeal against my decision. With that view, Mr. Lim Cheng Poh, for the defendant, concurred. I therefore granted a stay of execution pending appeal, conditional upon due prosecution of the appeal; such stay not to extend beyond the next sitting (in February, 1959) of the Court of Appeal in Penang.

*Appeal allowed.*

Solicitors: *H. E. P. Powell & Co.; Pillai, Lim, Lee & Hwang.*

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## REG. v. ISMAIL BIN MOHD. AMIN & ANOR.

[A.Cr.J. (Rose C.J.) January 28, 1959]

[Singapore — Magistrate's Appeal No. 255 of 1958]

*Dangerous drugs — Act of revenue officer in the course of his duty — Burden of proof — Exception — Dangerous Drugs Ordinance (Cap. 137), ss. 36 and 48.*

The first respondent, a revenue officer, was charged "that he on or about the 29th day of May, 1958 at about 8.15 p.m. in motor sampan No. SC 6875 at sea off Master Attendant's pier did have in his possession raw opium, to wit: 40 lbs. Gross, otherwise than under and in accordance with an authorisation such as is referred to sections 4 and 5 of the Dangerous Drugs Ordinance Cap. 137 or with a regulation made under section 7 of the said Ordinance contrary to and punishable under section 6 of the Dangerous Drugs Ordinance Cap. 137."

At the close of the prosecution evidence the respondents were acquitted without having been called upon for their defence. The learned District Judge who tried the case concluded his grounds of decision as follows:

"The prosecution proved a few minor points tending to raise suspicion against the 1st accused, but these were outweighed by the many material points shown in his favour. It is needless to say that mere suspicion is not enough to rebut the presumption of innocence in a criminal case, though it may well form the basis of a disciplinary enquiry against the officer.

"The prosecution therefore failed to establish a case against the 1st accused and it was the duty of the Court to acquit him forthwith. It was clearly shown that the 2nd accused was his informer at the time and as such, he also had to be acquitted on both charges without his defence being called."

From this decision the Public Prosecutor appealed.

**Held:** (1) it is clear from section 36 of the Dangerous Drugs Ordinance that the burden of proving the exception under section 48 rests upon the defence;

(2) if at the end of the prosecution case there were not sufficient facts to establish affirmatively that the exception under section 48 had been established, then the proper course is for the defendants to be called upon for their defence.

MAGISTRATE'S APPEAL.

*A. W. Ghows* (Crown Counsel) for the appellant.

*G. Abisheganaden* for the respondents.

*Cur. Adv. Vult.*

**Rose C.J.:** This is an appeal against an acquittal. The first respondent is a revenue officer and the suggested defence is that this is a case which falls within section 48 of the Dangerous Drugs Ordinance (Chapter 137). It is clear from section 36 of the Ordinance that the burden of proving that exception rests upon the defence. Having studied the grounds of decision given by the learned District Judge I am unable to conclude that he has come to a positive finding of fact that the exception has been established. Rather he would have appeared to have formed the view that the case is one of doubt and that that doubt should be resolved in favour of the respondents. With all respect to the learned District Judge I consider that that is not a correct view of the matter. It seems to me that if at the end of the prosecution case there were not sufficient facts to establish affirmatively that the exception under section 48 had been established, then the proper course was for the defendants to be called upon for their defence. As the matter will have to be investigated further, I do not wish to comment upon the value of the evidence in the case. The appeal must be allowed and the matter remitted to the learned District Judge to enable him to consider the defence, and determine the case according to law.

*Appeal allowed.*

Solicitors: *C. J. Koh & Co.*

## PRACTICE DIRECTION

**[J.C. March 17, 1959]**

*Privy Council — Costs — Refresher fees to counsel.*

The following direction is issued by the Privy Council Office:

The Registrar of the Judicial Committee of the Privy Council begs to notify parties in appeals to Her Majesty in Council that the practice of allowing upon taxation of costs only 10 guineas a day as refresher fees to both senior and junior counsel is to be discontinued. On taxation of costs of appeals set down for hearing after May 8, 1959, the registrar may in his discretion allow refresher fees to counsel in excess of 10 guineas. On refreshers which are allowed the junior counsel will have the usual two-thirds of the senior's fee.

*Registrar.*

## ABIRAMI AMMAL & ANOR. v. M.S.M.M. MEYAPPA CHETTIAR

**[C.A. (Thomson C.J., Rigby & Hepworth JJ.) January 22, 1958]**

**[Ipoh — F.M. Civil Appeal No. 11 of 1958]**

*Moneylender — Non-compliance with an express provision of the Ordinance — Unenforceable transaction — Security by way of charge — Borrower entitled to relief by way of return of documents of title and entry of a memorandum of discharge on the land register — Moneylenders Ordinance, 1951, s.16.*

*Land Code — Security executed in form of charge in the form prescribed by Schedule XXIV (a) of the Land Code — Whether particulars contained in the charge sufficient to satisfy the requirements of s.16(3) of the Moneylenders Ordinance.*

In this case on July 2, 1953 one C.P. borrowed $3,000 from one V.C., a moneylender, and the same day by way of security he executed a charge in the form prescribed by Schedule XXIV(a) of the Land Code. An authenticated copy of the charge was handed to C.P. before the money was delivered to him and the charge was duly registered. On January 14, 1954, C.P. transferred the land which was still subject of the charge to Sockalingam Mudaliar, a moneylender. On July 22, 1955, Sockalingam Mudaliar died and the present appellants are the executors of his will. On March 16, 1954 V.C. transferred the charge to the present respondent, who is also a moneylender, and on April 7, 1954, the respondent served on Sockalingam Mudaliar a notice under section 138 of the Land Code requiring payment of the principal sum and interest. This notice was not complied with and on January 11, 1957, the respondent commenced the present proceedings against Sockalingam Mudaliar's executors.

The executors (the present appellants) resisted the respondents claim on the ground that the charge was security given by the borrower in respect of a contract for the payment of money lent to him by the moneylender, that no note or memorandum of the contract had been signed and delivered in accordance with section 16(1) of the Moneylenders Ordinance and that it was therefore not enforceable by the reason of the provisions of that section. They went on to ask for an order that the respondent return to them the documents of title relating to the land which had been handed to the chargee when the land was charged and an order against the respondent to discharge the charge or otherwise have it removed from the land register.

The learned trial Judge took the view that the charge itself contained all the particulars required by section 16(3) of the Ordinance and it thus itself constituted a note or memorandum of the contract. He accordingly held that section 16(1) of the Ordinance had been complied with and as there was no question of the fact of the loan or of the authenticity of the charge or